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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 855/2022 & CRL.M.A. 26094/2022**

ADVAITH NAIR

.....Petitioner

Through: Ms. Seema Nath, Ms. Muskaan
Deswal, Ms. Poorvi Jain, Mr. Satish
Panchal and Mr. Sanjiv Saluja,
Advocates

versus

VIDHU P. NAIR

.....Respondent

Through: Mr. Tom Joseph, Ms. Arya Krishnan
and Mr. Anugraha Sabu, Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

06.02.2025

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1. This matter is being taken up today as 5th February, 2025 was declared a holiday on the account of Legislative Assembly Elections-2025 of the NCT of Delhi.

2. The instant revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter as the “Code”) [now under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter as the “BNSS”)] has been filed on behalf of the petitioner/revisionist seeking the following reliefs:

“A. Call for the trial court record.

B. Modify the order dated 29.07.2022 passed by Ld. Judge Family Court, New Delhi District, Patiala House Court, New Delhi in Mt. No. 55/2020 and grant to the Petitioner monthly maintenance @ Rs.2,00,000/- per month from the date of filing application for interim maintenance.

C. Pass such other and further order/sand grant such other and further relief/s that this Hon'ble Court may deem just, fit,



proper and necessary in the facts and circumstances of the case and in the interest of justice and equity.”

3. The brief facts of the case are that the petitioner is the son of the respondent and was born on 29th January, 2004. The respondent i.e., the father of the petitioner serves the Indian Foreign Services and is currently, the Ambassador of India to Turkmenistan. In the year 2014, the petitioner's mother was diagnosed with cancer and on 28th February, 2017, she passed away. Thereafter, in the year 2018, the respondent remarried and has a daughter out of the said wedlock. The petitioner has been residing with his maternal grandparents since July, 2019.

4. It is alleged by the petitioner that the respondent has been cruel towards him since his mother's cancer diagnosis and has been reluctant in discharging his duty as a father till date.

5. Aggrieved by the conduct of the respondent, the petitioner *via* his maternal grandmother instituted a petition under Section 125 of the Code before the learned Principal Judge, Family Court, New Delhi District, Patiala House, New Delhi (hereinafter as the “Family Court”) seeking maintenance from the respondent. The learned Family Court vide order dated 23rd February, 2021, granted an *ad-interim* maintenance of Rs. 25,000/- per month in favour of the petitioner.

6. Thereafter, an application under Section 127 of the Code was filed by the respondent for setting aside of the order dated 23rd February, 2021 on the ground that the petitioner attained the age of majority and is deprived of any maintenance.

7. The learned Family Court vide order dated 29th July, 2022



(hereinafter as the “impugned order”) disposed of the said application while granting an interim maintenance of Rs. 50,000/- per month to the petitioner from the date of application till the date on his attaining the age of majority i.e., 29th January, 2022.

8. Aggrieved by the impugned order, the petitioner filed the instant revision petition seeking modification of the interim maintenance.

9. Learned counsel for the petitioner submitted that the learned Family Court erred in passing the impugned order as the same is passed without considering the facts and circumstances of the case.

10. It is submitted that the learned Family Court erred in awarding an interim maintenance of Rs. 50,000/- to the petitioner as the same is not sufficient given his tuition fee of the school as well as his daily expenses. Furthermore, it is submitted that the petitioner’s expenses have been taken care of by his maternal grandparents since July, 2019 and therefore, the said interim maintenance is highly insufficient to compensate the same.

11. It is submitted that the learned Family Court erroneously passed the impugned order as it ignored the petitioner’s affidavit of income, assets and expenditure in addition to the fact that the respondent earns more than the income reflected in his income certificate.

12. It is further submitted that is a settled position of law that if a child of an abled father is not in a position to maintain himself/herself, then it is the duty of the father to provide maintenance to his child.

13. In view of the foregoing submissions, it is prayed that the interim maintenance may be modified from Rs. 50,000/- to Rs. 2,00,000/-, thereby allowing the instant revision petition.

14. *Per contra*, learned counsel appearing on behalf of the respondent



vehemently opposed the instant petition and submitted that the instant petition is nothing but a gross misuse of process of law.

15. It is submitted that the petitioner herein has already attained the age of majority on 29th January, 2022 and therefore, is not entitled for any maintenance as he is in a position to maintain himself. In support of his arguments, learned counsel for the respondent referred to the provision of Section 125 of the Code and submitted that it is an admitted fact that the petitioner has already attained the age of majority and therefore, as per the statutory mandate, the petitioner is not entitled to maintenance as he is not a disabled person who is unable to maintain himself after attaining the age of majority.

16. It is submitted that the learned Family Court has taken due consideration of the income certificate as well as the material available on record while granting the interim maintenance to the petitioner. Moreover, it is submitted that the respondent is a married person with another child and therefore, has other expenses to adhere to.

17. It is further submitted that the final proceedings under Section 125 of the Code is also pending before the learned Family Court and is currently at the stage of evidence. Therefore, the grounds taken by the petitioner for the enhancement of interim maintenance may be taken before the learned Family Court.

18. It is submitted that taking into consideration the material on record as well as the reasons assigned by the learned Family Court while granting the interim maintenance, this Court may not interfere in the impugned order by exercising its revisional jurisdiction as the same does not suffer from any illegality or irregularity.



19. Therefore, in view of aforesaid submissions, it is prayed that the instant petition, being devoid of any merits, is liable to be dismissed with cost.

20. Heard learned counsel appearing on behalf of the parties and perused the contents made in the petition as well as the documents available on record.

21. As per the settled position of law, the revisional jurisdiction conferred upon this Court is limited in nature the same cannot be exercised in a mechanical manner. However, the said revisional jurisdiction can be exercised when there is a gross illegality or irregularity in the findings given by the court concerned.

22. Since the issue before this Court is with respect to the modification/enhancement of the interim maintenance awarded to the petitioner, this Court finds it apposite to peruse the findings of the impugned order to that effect and the relevant portion of the same is reproduced as under –

“12. Now, I shall consider the issue of interim maintenance. It is not in dispute that the respondent being father has to maintain the child. The question Whether he could have afforded the fee of the schools' attended by the petitioner and the amount which he should have paid towards the other expenses can be decided after evidence. The respondent has not filed his ITRs and bank statements. His assertion that while posted in India, he gets approximately Rs. 1.50 Lacs per month appears to be incorrect. A person of his profile can easily afford to pay at least Rs. 50,000 per month to the child. Accordingly, it is directed that the respondent will pay Rs. 50,000/- to the child from the date of the application till 29.01.2022. The payments already made towards the ad-interim maintenance will be adjusted in this amount. The



arrears be cleared in three monthly installments. Litigation expenses of Rs. 25,000/- be also paid, if not already paid. If a lesser litigation expenses was paid earlier, the balance litigation expenses in terms of the present order be paid with the first installment of arrears on or before 10th August 2022. The other two installments be also paid on or before 10th day of the subsequent months.

13. The petitioner has now become major and he can file his own affidavit of income and assets. He is directed to file his income affidavit in the format prescribed by Hon'ble Supreme Court in Rajnesh Vs. Neha. The respondent is also directed to file the bank statements, ITRs, salary slip and other documents as required under Rajnesh Vs. Neha. Both applications are disposed of in terms of the directions given above."

23. While determining the interim maintenance, it is observed that the learned Family Court has duly noted that the petitioner herein is not entitled to maintenance under Section 125 of the Code since he has already attained the age of majority on 29th January, 2022. However, it is also observed that the respondent has not filed the requisite documents such as the Income Tax Returns (ITRs) and bank statements, and therefore, the declaration that he earns a sum of Rs. 1,50,000/- was not made conclusively.

24. It is the case of the petitioner that even before attaining the age of majority, the educational as well as the daily expenditure were only borne by his maternal grandparents and that the respondent was reluctant to provide any maintenance to the petitioner.

25. However, the learned Family Court has observed that the issue of affordability of the respondent in paying for the other expenses of the petitioner is an issue which can be determined after the stage of evidence.

26. Adverting to the instant case, it is an admitted fact that the petitioner herein has already attained the age of majority on 29th January, 2022 and an



interim maintenance of Rs. 50,000/- per month was granted to the petitioner *vide* impugned order.

27. It is to be noted that the impugned order was passed while disposing of the application filed under Section 127 of the Code, which deals with the alteration of allowance, and that the maintenance awarded to the petitioner herein is only interim in nature. Therefore, in the absence of any requisite documents such as the ITRs and the bank statements, the learned Family Court was right in awarding a reasonable sum of Rs. 50,000/- per month as interim maintenance from the date of filing of the application till the date of his attaining the age of majority i.e., 29th January, 2022.

28. However, as rightly mentioned in the impugned order, the affordability of the respondent in paying for the other expenses of the petitioner can be determined only after the stage of evidence.

29. Given the limited jurisdiction of this Court while exercising its revisional powers, this Court finds no reason to interfere with the impugned order at this stage.

30. Therefore, this Court is of the considered view that there is no illegality in the impugned order dated 29th July, 2022 passed by the learned Principal Judge, Family Court, New Delhi District, Patiala House, New Delhi in MT Case No. 55/2020 and the same is, hereby, upheld.

31. Accordingly, the instant revision petition is dismissed being devoid of any merit, along with pending applications, if any.

CHANDRA DHARI SINGH, J

FEBRUARY 6, 2025/gs/mk

[Click here to check corrigendum, if any](#)